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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Date: October 5, 1994

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I. INTRODUCTION

Pursuant to Rule 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") files Comments on the Commission's Notice Of Proposed Rule Making ("NPRM") in the above-referenced docket.^{1/}

In the NPRM, the Commission tentatively concluded that the restriction on wireline ownership of Specialized Mobile Radio ("SMR") and 220 MHz systems should be eliminated in light of the significant changes that have taken place in the wireless communications industry.^{2/} The Commission also tentatively concluded that the prohibition on common carrier dispatch service should be "modified or eliminated" due to the increasing competitiveness of all mobile communications services.^{3/}

^{1/} Notice of Proposed Rule Making, GN Docket No. 94-90, released August 11, 1994.

^{2/} NPRM at para. 15.

^{3/} Id.

The Commission, however, recognized that numerous issues are associated with eliminating these prohibitions. For example, as rate-regulated providers, wireline carriers could use the revenues earned under their guaranteed rate of return to fund their ventures into wireless communications services, thereby shifting the cost of their non-regulated activities onto the wireline telephone user. In light of this potential for cross-subsidization by wireline companies, the Commission sought comment on the necessity of strengthening its existing accounting safeguards and restrictions and on whether the Commission should impose structural separation requirements.^{4/} The Commission queried whether it should impose new eligibility restrictions that would limit the SMR participation of certain providers, i.e., cellular carriers. The Commission also expressed concern that wireline carriers might engage in discriminatory interconnection practices which favor their wireless affiliates.^{5/}

With regard to the common carrier dispatch prohibition, the Commission suggested potential alternatives to an immediate elimination of the rule: (1) a sunset of the restriction; or (2) a limited repeal which would allow common carriers to provide dispatch on only a secondary or limited basis.^{6/}

As the largest provider of traditional SMR services and Enhanced Specialized Mobile Radio Services ("ESMR") in the nation,

^{4/} Id. at paras. 27-28.

^{5/} Id. at para. 26.

^{6/} Id. at paras. 31-33.

Nextel has a significant interest in this proceeding. Established in 1987 as Fleet Call, Inc., Nextel has accumulated numerous SMR systems on which it provides traditional dispatch services. Nextel has also initiated commercial ESMR services in California and plans to begin ESMR service in Chicago and New York during the next few months.

The Commission's Second Report and Order in GN Docket No. 93-252,^{7/} which implemented the provisions of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act")^{8/}, created a new regulatory classification of mobile radio services: "Commercial Mobile Radio Service" ("CMRS"). Among the services the Commission defined as CMRS were SMRs, cellular and personal communications services ("PCS"). As a provider of private mobile radio services, however, Nextel's classification as CMRS is not effective immediately. Pursuant to a transition period provided by the Budget Act, Nextel and other reclassified CMRS providers will not be regulated under the CMRS rules and regulations until August 10, 1996.^{9/} During the transition, Nextel will make necessary system adjustments in preparation for its regulation as a CMRS provider.

^{7/} Second Report and Order, 9 FCC Rcd 2863 (1994) ("Second Report and Order").

^{8/} See Pub. L. No. 103-66, Title VI, 6002 (b)(2)(A), (B), 107 Stat. 312, 392 (1993) ("Budget Act").

^{9/} See Section 6002 (c)(2)(B) of the Budget Act. See also Third Report and Order, GN Docket No. 93-252, released September 23, 1994, at para. 2, n. 5 (pursuant to the transition period provided by Congress, "existing private land mobile licensees that are reclassified as CMRS providers will continue to be regulated as private service providers. . . ").

II. DISCUSSION

A. Nextel Supports Elimination Of The Prohibition On Wireline Ownership of SMRs.

The prohibition on wireline entry into the SMR industry was initially adopted by the Commission to prevent the potential for anti-competitive behavior in "the fledgling SMR industry."^{10/} To prevent dominance of the market by wireline companies, which had enjoyed an enormous head-start, accumulation of capital, and guaranteed access to the cellular spectrum, the Commission determined that they should not be allowed to participate in the SMR industry, thereby leaving participation open to new entrants. Nextel agrees with the Commission's tentative conclusion that SMR services and all other wireless services have undergone such a dramatic change that the Commission's initial concerns are no longer significant. Wireline carriers, therefore, should be permitted to own and operate SMR systems.

The passage of the Budget Act and the Commission's Second Report and Order have eliminated the basis for continued wireline prohibition. All CMRS have been classified as common carriers, subjected to similar regulations, and deemed potentially competitive with one another.^{11/} In light of this evolving competitive atmosphere, there is no compelling public policy basis for wireline eligibility restrictions in the SMR industry.

^{10/} Id. at para. 5.

^{11/} See Third Report and Order at para. 43.

Nextel concurs with the Commission's conclusion that the influx of wireline capital into SMR systems could provide economies of scale and needed financial investment in the developing wireless industry.^{12/} By allowing these established providers to invest in the SMR and 220 MHz markets, the Commission would be opening an entirely new avenue of investment. This could potentially speed the development of wireless services, resulting in more rapid deployment of enhanced telecommunications services and a more competitive CMRS market.

Nextel likewise agrees that the wireline prohibition is no longer necessary in light of the existing safeguards to prevent anti-competitive behavior by wireline companies.^{13/} Not only are wireline companies prohibited from engaging in discriminatory

^{12/} See NPRM at para. 17.

^{13/} Nextel is concerned, however, about the possibility of wireline carriers engaging in anticompetitive behavior in the emerging wide-area SMR industry. The Commission should adopt safeguards to prevent wireline companies, once eligible to be SMR licensees, from using their extensive financial clout to artificially "bid up" the price of SMR spectrum in the upcoming 800 MHz block license auctions. (See Third Report and Order at paras. 95-100) Wireline entities might raise the bids for these licenses, simply to increase their cost to the disadvantage of the eventual licensee auction winners, thereby benefitting their cellular and PCS wireless affiliates. In this way, the very advantages the Commission cites in favor of wireline SMR entry, *i.e.*, new capital and service and technical expertise, would be misapplied to frustrate instead of to advance competition among CMRS providers.

Therefore, Nextel strongly encourages the Commission to establish strict construction requirements to assure that only bidders that can actually build out MTA wide systems are eligible for the 800 MHz wide-area SMR auctions. At a minimum, the Commission should require 800 MHz MTA licensees to cover at least three-fourths of the population of the MTA within five years, utilizing 50 percent or more of the channels assigned to them under the MTA license.

behavior by Sections 201 and 202 of the Communications Act,^{14/} but they are also specifically subject to mandatory interconnection obligations by the Commission's Second Report and Order.^{15/} In establishing the CMRS regulatory framework, the Commission required that local exchange carriers ("LECs") provide interconnection to all CMRS providers upon reasonable request. In addition, Nextel urges the Commission to closely review wireline companies' compliance with the existing cross-subsidy accounting rules. The Commission must ensure that these companies do not underwrite the cost of their wireless participation with their rate-regulated services.

B. Nextel Supports Phasing Out The Dispatch Prohibition As Of August 10, 1996.

Prior to the Budget Act, common carriers were prohibited from providing fleet dispatch services on common carrier radio spectrum.^{16/} Although the Budget Act retained the prohibition, the Commission was given the discretion to eliminate it, in whole or in part, through rule making. Thus, the NPRM asks whether the Commission should eliminate or modify the existing dispatch prohibition.

In light of the emerging competitive CMRS market, the elimination of the dispatch prohibition may be warranted, but only

^{14/} 47 U.S.C. Sections 201 and 202 (1988).

^{15/} Second Report and Order, supra n. 7, at para. 230.

^{16/} Such services were defined as those transmitted between a dispatcher and one or more mobile stations, without passing through the mobile telephone switching facilities. See Section 22.2 of the Commission's Rules.

after the end of the transition period Congress provided for reclassified CMRS: August 10, 1996. The transition period was intended to be a three-year period during which reclassified private carriers were to remain under private mobile service regulation as they adjusted their systems and operations, and prepared for regulation as a common carrier. Eliminating the dispatch prohibition -- and thereby allowing the immediate entry of common carrier providers into the dispatch market -- would disrupt the dispatch market, thereby violating the intent of the transition period.^{17/}

Immediate entry of common carriers into the dispatch market would be also be inequitable due to the current dynamics of the SMR industry. At this time, the Commission has proposed a new licensing scheme for 800 MHz SMR providers.^{18/} However, no specific proposal has been introduced and no conclusions have been reached. Therefore, the Commission cannot inject new dispatch competition at a time of such uncertainty in the SMR industry. To do so would be inequitable and would violate the intent of the Budget Act's transition period.

Thus, consistent with the statutorily-mandated transition period for existing private carriers subject to reclassification,

^{17/} The purpose of the transition period is to give reclassified providers time to adjust their practices and operations to the new regulatory scheme. See Statement of Mr. Markey, Congressional Record, H6163, August 5, 1993. Injecting competition into the market immediately will hinder these efforts and affect the competitiveness of the reclassified providers.

^{18/} See Third Report and Order at para. 100.

Nextel submits that the Commission should establish a sunset date for the dispatch prohibition -- August 10, 1996. At that time, all CMRS -- both existing and reclassified -- will be subject to the new CMRS rules and regulations and will be facing the potential of competition from all sectors of the CMRS industry.

III. CONCLUSION

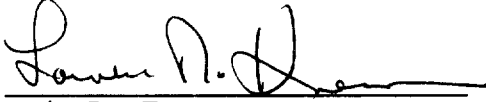
The Commission's prohibition on wireline participation in the SMR industry is outdated and no longer justified by the competitive structure of the SMR industry. As part of the larger and more competitive CMRS market, SMR systems should be open to investment from wireline companies. Safeguards exist which, if closely monitored and appropriately supplemented by the Commission, will ensure a competitive atmosphere free from anti-competitive behavior by any CMRS provider -- whether or not affiliated with a wireline company.

Because common carriers are currently prohibited from providing dispatch services -- a service traditionally provided by SMR carriers which have been reclassified as CMRS -- the Commission cannot allow immediate elimination of the prohibition. This would propel competition onto formerly private carriers who are attempting to prepare for the competitive challenges of the emerging CMRS industry. Congress established a transition period for these reclassified providers to adjust their operations without

the added hurdle of new competition. In light of this congressionally-mandated transition period, the Commission must delay the elimination of the prohibition until August 10, 1996.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 5th day of October 1994, I caused a copy of the attached Comments of Nextel Communications, Inc., to be served by hand delivery or first-class mail, postage prepaid to the following:

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